(2020) 02 SEBI CK 0004

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 514, 521, 522, 524 Of 2019, Appeal No. 420, 421, 422, 423 Of 2019

Giriraj Kumar Gupta HUF And Others — APPELLANT

Vs

Securities And Exchange Board Of India And Others — RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 SEBI CK 0004

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Full Bench

Advocate : Bhupender Sharma, Sumit Kumar, Kevic Setalvad, Chirag Bhavsar, Eram Quraishi, Harshad Vyas

Final Decision : Disposed Of

Judgement

Dr. C.K.G. Nair

1. These four appeals have been preferred to challenge the orders of the Whole Time Member (â??WTMâ? for convenience) of the Securities and

Exchange Board of India (â??SEBIâ? for convenience) dated June 04, 2019 and an addendum dated July 30, 2019. By the said order(s) the

appellants, among others, have been restrained from dealing in the securities market, directly or indirectly, for a period of 4 years.

2. The order impugned in these appeals have been issued pursuant to an investigation by SEBI in the abnormal price rise in the scrip of Ram Minerals

and Chemicals Limited (â??RMCLâ? for convenience), a company listed in the BSE Limited. During the period of examination which is from

December 13, 2013 to December 10, 2014 the price of the scrip increased from Rs. 2.2 to Rs. 219.55. SEBI had also received a reference from the

Principal Director of Income Tax (Investigation), Kolkata vide letter dated April 27, 2015 alleging the usage of the stock exchange mechanism to

benefit from Long Term Capital Gain Tax, wherein one of the scrips included was that of RMCL.

3. Thereafter, a show cause notice was issued on June 27, 2017 to 19 entities/ noticees enclosing the findings of SEBIâ??s investigation. In the show

cause notice it was alleged that during the period of investigation, the price of the scrip increased from Rs. 2.2 to Rs. 219.55 with a net Last Traded

Price (â??LTPâ?) of Rs. 217.35. The show cause notice also provided information relating to the 10 top buyers, 15 top sellers (counterparties); their

detailed buy and sell position, contribution to LTP etc. Three of the appellants; Giriraj Kumar Gupta HUF, Giriraj Kumar Jagdish Prasad Gupta and

Rajeev Kumar Ram Prasad Gupta were part of the buyers who contributed substantially to LTP, about 3% or more while the appellant Neetu Gupta

was on the sell side contributing to positive LTP of 1.21% of the total market positive LTP. All these details are given at pages 3 to 7 of the impugned

order.

4. Further, it is held in the impugned order that connection between the noticees/ appellants have been established in terms of off-market transfers in

the scrip, company directorships, address and through fund transfers. Accordingly, it is held in the impugned order that the three appellants Giriraj

Gupta, Neetu Gupta and Rajeev Kumar Gupta received 1500 shares each off-market from All Time Buildtech Pvt. Ltd. on March 29, 2014. From

such off-market transfers a connection is established between the seller and the buyer on the premise that without such connection an off-market

transfer is not possible and that too in shares of the same scrip from the same entity.

5. Similarly, it is held in the impugned order that the connections between All Time Buildtech Pvt. Ltd. and three other noticees (Anuradha Arora,

Aradhna Choudhary and B G Freight Shoppe India Pvt. Ltd.) are established through common address and common directorship. Similar connection

has been established regarding fund transactions, among others between All Time Buildtech Pvt. Ltd. and B G Fright Shoppe India Pvt. Ltd.

6. It is the contention of the learned counsel Shri Bhupender Sharma, appearing on behalf of the appellants, that three of the appellants herein are

connected/ related is an admitted position with appellant in Appeal No. 422 of 2019 as the Karta of appellant in Appeal No. 420 of 2019 and appellant

in Appeal No. 423 of 2019 as the wife of appellant in Appeal No. 422 of 2019. So there is nothing untoward in the finding that they are connected

entities which is the fact but appellant in Appeal No. 421 of 2019 is not connected to the other three entities. It was also contended that the only

connection established between these appellants to the entire issue is the off-market purchase of 1500 shares each by the three appellants from All

Time Buildtech Pvt. Ltd. on March 29, 2014. It is the contention of the learned counsel for the appellants that since the appellants were trading in the

securities market they came to know of the parties and bought the shares. Moreover, the appellants traded only on a few days. For instance, appellant

Neetu Gupa traded only in two shares, 1 share each on two occasions; appellant Giriraj Kumar Gupta HUF traded in 15 shares on three occasions

combined and appellant Rajeev Kumar Ram Prasad Gupta traded on 29 occasions and in a total of 1105 shares. It was also submitted that all these

details are also given in Table-7 (pg. 13 and 14) of the order of the Adjudicating Officer dated July 31, 2019. Similarly, even the alleged LTP

contribution is very insignificant in respect of these trades and in the case of the seller Neetu Gupta, no charge of LTP contribution can be attributed

because a seller would always wants to sell at maximum possible rates.

7. It was also contended by the learned counsel that seven entities who have traded in similar ways have been let off with a warning by the same

impugned order. Hence since the appellants have also traded in miniscule quantities in the normal course of business and having found no connection

with other entities except an off-market transaction with one of them which is not sufficient to invoke provisions of SEBI (Prohibition of Fraudulent

and Unfair Trade Practice relating to Securities Market) Regulations (â??PFUTPâ?) violations. In any case, it was contended that the restraint of 4

years imposed on the appellants is too harsh particularly when the appellants earn their livelihood by trading in the securities market.

8. We have also heard Shri Kevic Setalvad, learned Senior counsel representing SEBI who emphasised that off-market purchases by three of the

appellants from the same party on the same day is not just a co-incidence and when the scrip has been manipulated to raise the price from Rs. 2.2 to

Rs. 219.55 and wherein a group of entities including the appellants are found to have played a substantive role in fraudulent and manipulative trade

practices. Therefore, there is no deficiency in the impugned order and the debarment imposed on the appellants is in tune with the seriousness of the

violations committed by them. It was also contended by the learned senior counsel for the respondent that a small quantity of buy or sell order itself is

deceptive as such orders were placed when there was large number of counterparty orders in the market. Learned senior counsel for respondent also

placed their reliance on the orders of this Tribunal in Jayprakash Bohra vs. SEBI (Appeal No. 162 of 2019 decided on 05.11.2019 and Shri Lakhi

Prasad Kheradi vs. SEBI (Appeal No. 232 of 2017 decided on 21.06.2018.

9. Though, we note that the appellants have raised the issue of delay, the same is not argued by the learned counsel. Hence we do not propose to go

into the issue and deal with only the merit of the matter. Having heard the learned counsel for the parties, we are of the considered view that the

impugned transactions, in the facts and circumstances of the matter, would fall in the realm of violations of PFUTP Regulations. Individual argument

that each entityâ??s trade is miniscule and only on a few days alone etc. is not sufficient to rebut the findings in the impugned order. The appellants

have not given the details of their off-market transactions with an entity which is also found to be part of the group which manipulated the scrip of

RMCL. The unwillingness of the appellants in giving the details of those off-market transactions and in turn placing buy orders above LTP in the

market subsequently cannot be viewed in isolation. The argument submitted by the learned counsel for the appellants that no further connection has

been established therefore has no merit in the totality of the facts and circumstances of the case. In such matters, the preponderance of probability

based on the totality of circumstances, as held by the Apex Court in the matter of Kishore R. Ajmera (2016) 6 SCC 368 squarely applies. The orders

in Jayprakash Bohra (Supra) and Shri Lakhi Prasad Kheradi (Supra) also apply the same ratio.

10. However, we note from the impugned order that there has been a division of the noticees into two categories: 12 of them have been imposed a

restraint for 4 years while 7 of them have been let off with a warning. This is apparently based on the magnitude of trade and the contribution to the

LTP. By the same reasoning we are of the view that the restraint imposed on Neetu Gupta (appellant in Appeal No. 423 of 2019) cannot be sustained

particularly when she was only a seller who traded only on two occasions. However, being part of the group and recipient of the off-market deal we

do not propose to completely exonerate her. Similarly given the facts of the matter we are of the considered view that a uniform restraint of 4 years

imposed on the appellants is harsh.

11. In conclusion, we are of the considered view that a warning is sufficient to meet the ends of justice in respect of Neetu Gupta, appellant in Appeal

No. 423 of 2019. In Appeal No. 420 of 2019 and 422 of 2019 we reduce the period of restraint from 4 years to 1 year and in Appeal No. 421 of 2019

we reduce the period of restraint from 4 years to 2 years.

Directions in the impugned order are modified accordingly.

12. All the appeals are disposed of on above terms with no orders on costs. Consequently, Misc. Application Nos. 521 of 2019, 522 of 2019 524 of

2019 and 88 of 2020 seeking stay and Misc. Application No. 514 of 2019 seeking exemption to file certified copy of the impugned order have become

infructuous and the same are also disposed of.